

**Effective 5/10/2016**

### **Part 3 Investigation and Enforcement**

#### **57-29-301 Title.**

This part is known as "Investigation and Enforcement."

Enacted by Chapter 381, 2016 General Session

#### **57-29-302 Rulemaking.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, the commission, with concurrence by the division, may make rules governing:

- (1) the form of the disclosures required under this chapter; and
- (2) enforcement of the provisions of this chapter.

Enacted by Chapter 381, 2016 General Session

#### **57-29-303 Investigatory powers and proceedings of division.**

- (1) The division may:
  - (a) conduct a public or private investigation to determine whether a person has violated or is about to violate a provision of this chapter; and
  - (b) require or allow a person to file a written statement with the division that relates to the facts and circumstances concerning a matter to be investigated.
- (2) For the purpose of an investigation or proceeding under this chapter, the division may:
  - (a) administer oaths or affirmations; and
  - (b) upon the division's own initiative or upon the request of any party:
    - (i) subpoena a witness;
    - (ii) compel a witness's attendance;
    - (iii) take evidence; or
    - (iv) require the production, within 10 business days, of any information or item that is relevant to the investigation, including:
      - (A) the existence, description, nature, custody, condition, and location of any books, electronic records, documents, or other tangible records;
      - (B) the identity and location of any person who has knowledge of relevant facts; or
      - (C) any other information or item that is reasonably calculated to lead to the discovery of material evidence.
- (3) If a person fails to obey a subpoena or other request made in accordance with this section, the division may file an action in district court for an order compelling compliance.

Enacted by Chapter 381, 2016 General Session

#### **57-29-304 Enforcement.**

- (1)
  - (a) If the director believes that a person has been or is engaging in conduct that violates this chapter, the director:
    - (i) shall issue and serve upon the person a cease and desist order; and
    - (ii) may order the person to take any action necessary to carry out the purposes of this chapter.

- (b)
    - (i) A person served with an order under Subsection (1)(a) may request a hearing within 10 days after the day on which the person is served.
    - (ii)
      - (A) If a person requests a hearing in accordance with Subsection (1)(b)(i), the director shall schedule a hearing to take place no more than 30 days after the day on which the director receives the request.
      - (B) The cease and desist order remains in effect pending the hearing.
    - (iii) If the director fails to schedule a hearing in accordance with Subsection (1)(b)(ii)(A), the cease and desist order is vacated.
  - (c) The division shall conduct a hearing described in Subsection (1)(b) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) After a hearing described in Subsection (1)(b):
- (a) if the director finds that the person violated this chapter, the director may issue a final order making the cease and desist order permanent; or
  - (b) if the director finds that the person did not violate this chapter, the director shall vacate the cease and desist order.
- (3) If a person served with an order under Subsection (1)(a) does not request a hearing and the person fails to comply with the director's order, the director may file suit in district court in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter.
- (4) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-29-305.

Enacted by Chapter 381, 2016 General Session

**57-29-305 Voidable agreements.**

- (1)
- (a) If a sponsor violates a provision of this chapter in entering into an agreement to purchase an undivided fractionalized long-term estate, the purchaser may rescind the agreement.
  - (b) A purchaser may rescind an agreement under this Subsection (1) at any time before the closing.
- (2) A purchaser who rescinds an agreement in accordance with Subsection (1) is entitled to all the consideration that the purchaser gave under the rescinded agreement.
- (3) In an action to enforce a purchaser's right of rescission under Subsection (1), the court shall award costs and reasonable attorney fees to the prevailing party.

Enacted by Chapter 381, 2016 General Session